COURT OF APPEALS
DECISION
DATED AND FILED

August 20, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 97-3117

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

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96 PR 17
IN THE MATTER OF THE ESTATE OF MARY KATHERINA WILLIAMS, DECEASED:

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96 CV 1507
JOHN BOUGHTON AND JANET PFLIEGER,

PLAINTIFFS-APPELLANTS,

V.

FIRSTAR BANK WISCONSIN,

DEFENDANT-RESPONDENT,

LEONARDA PASCUAL NEVARES, ALISON BOUGHTON OLACIREGUI, FREDERICK SMALL, LOUISE SMALL AND UW STOUT FOUNDATION - ART DEPARTMENT,

DEFENDANTS,

BLESSED SACRAMENT CHURCH,

DEFENDANT-RESPONDENT,

SHRINE OF ST. JUDE AND CHILDREN'S THEATRE OF MADISON,

DEFENDANTS,

UW FOUNDATION FOR THE ELVEJEHM MUSEUM OF ART AND ST. JOSEPH ENDOWMENT FUND OF HOLY NAME SEMINARY, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County: GERALD C. NICHOL, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. John Boughton and Janet Pflieger appeal from a trial court order admitting the testamentary dispositions of their aunt, Mary Katherina Williams, to probate over their objections. Appellants argue that no factual evidence supports the trial court's rejection of their proof that Williams suffered insane delusions or their proof that these delusions materially reduced the amount they would otherwise have been expected to inherit. We conclude that the record contains the requisite credible evidence to sustain the trial court's order. Therefore, we reject appellants' arguments and affirm.

BACKGROUND

Williams died childless in 1995 at age ninety-one. She was an art professor and a devout Roman Catholic. By a will executed in 1991, she left Boughton, her nephew, and Pflieger, her niece, approximately ninety percent of her multi-million dollar estate, in equal shares. However, Williams subsequently

executed a 1992 will and a 1993 trust with pour-over will leaving the bulk of her estate to art-oriented and religious organizations, and leaving Boughton and Pflieger each ten percent of her estate.[1]

Appellants objected to admitting the 1992 and 1993 testamentary instruments to probate on the grounds that Williams was not competent at the time of execution, and on the grounds that Williams was suffering insane delusions about appellants—for example, she believed that Pflieger had stolen objects from her, and that both Boughton and Pflieger were improperly obtaining money from her.

After an eight-day trial with numerous witnesses, the court concluded that Williams was not incompetent at the time she executed the 1992 and 1993 instruments, and she was not suffering delusions. In this appeal, Boughton and Pflieger do not challenge the finding on competence,[2] but do challenge the finding on delusion.

STANDARD OF REVIEW

Where, as here, the findings of the trial court are based on conflicting evidence, the test on appeal is whether, on due consideration of the evidence as whole, a reasonable judicial mind could have reached the same conclusion. ***Estate of Evans***, 83 Wis.2d 259, 271, 265 N.W.2d 529, 533 (1978). We defer to the fact findings of the trial court, and those findings will not be upset

[1] This appears to have amounted to approximately one-half million dollars each.

[2] Much of the competence evidence involved Williams' alleged Alzheimer's disease. Because competence is not being challenged here, we do not consider whether Williams had "lucid intervals," and other like evidence.

on appeal unless they are clearly erroneous. ***Id.***; ***Noll v. Dimiceli's, Inc.***, 115 Wis.2d 641, 643, 340 N.W.2d 575, 576 (Ct. App. 1983). Stated otherwise, the question on appeal is not whether this court would reach the same findings, but whether the findings should be affirmed as not being clearly erroneous. We do not examine the record for evidence to support findings the trial court did not make, but for facts to support the findings the trial court did make. ***Id.***

Appellants urge this court to adopt a de novo standard to review the application of a legal standard to undisputed facts, citing ***Madison Reprographics v. Cook's Reprographics***, 203 Wis.2d 226, 553 N.W.2d 440 (Ct. App. 1996). However, there are no undisputed facts relevant to this appeal. The de novo standard is therefore not appropriate.

ANALYSIS

This case is controlled by ***Estate of Evans***, 83 Wis.2d 259, 265 N.W.2d 529, (1978), the leading (and most recent) Wisconsin Supreme Court case regarding insane delusions. ***Evans*** held that testamentary dispositions will be overturned if they meet a two-pronged test: (1) the testator had an insane delusion; and (2) the insane delusion materially affected the disposition objected to. ***Id.*** at 83 Wis.2d at 273-74, 265 N.W.2d at 534-35.

Regarding the first prong, an insane delusion is a false belief which would be incredible to the victim if she were of sound mind, and from which she cannot be dissuaded by any evidence or argument. ***Id.*** at 271, 265 N.W.2d at 533-34. The test of whether an erroneous belief is an insane delusion is an objective one: whether a sane person could have formed such a belief from the evidence. ***Id***. Further, a belief must have a rigid or persistent quality, and must be

unreasonably adhered to over time, if it is to assume the status of an insane delusion. ***Id.*** at 276, 265 N.W.2d at 536.

Merely showing insane delusion, however, will not succeed unless the second prong is also fulfilled—unless it is reasonably certain that "but for" the insane delusion, the objectors would have received a materially larger portion of the estate. When the evidence shows substantial evidence that, regardless of the insane delusion, the testator would have made the same disposition of property for other reasons, the will should be admitted to probate. ***Id***. at 274, 265 N.W.2d at 535.

Insane Delusion

Appellants cite to portions of the record which tend to show that Williams was confused, unjustifiably suspicious, and under delusions that they were taking objects and money from her. These include testimony of various nurses and home health aides about Williams' unfounded accusations that Pflieger had taken Williams' paintings, car, and other objects. Even when shown the car, and when offered to be shown the pictures, this testimony tends to show that Williams persisted in her belief.

Respondents, the art-oriented and religious institution beneficiaries, cite to the testimony of medical personnel, religious figures, financial figures and an attorney. These testimonies suggest that, while Williams believed Pflieger and Boughton may have taken things or improperly acquired money from her, her belief was not persistent, but rather mentioned casually; Williams nonetheless loved Boughton and Pflieger; and Williams was persuaded to, and wanted to, provide for them in her will. Further evidence shows that concurrently with her beliefs about Boughton's and Pflieger's improper behavior, Williams made gifts

of objects and money to them, and otherwise showed that she cared for them, and enjoyed their company.

The testimony cited by respondents is the type of "substantial and credible testimony" required to support the trial court's findings that Williams' beliefs were not of the persistent quality necessary to amount to an insane delusion. Many witnesses, even those of appellants, testified that Williams continued to interact positively with Boughton and Pflieger, and to give them gifts both before and after she changed her will. Thus, we must affirm.

Material Effect

Although we conclude that evidence supports the trial court's conclusions that Williams was not suffering insane delusions, our disposition would not alter even if we concluded the opposite. This is because appellants cannot meet the second prong of the test—whether it is reasonably certain that "but for" the insane delusion, the objectors would have received a materially larger portion of the estate. ***Evans*** at 274, 265 N.W.2d at 535.

Appellants argue that Williams' delusion alone accounts for the cut in their individual inheritances from forty-five percent of her estate by the 1991 will, to ten percent of the estate by the 1992 and 1993 instruments. However, as the trial court found, this is contradicted by both negative and positive evidence in the record.

On the negative side, testimony shows that Williams had a falling out with Pflieger concerning Williams' move from her apartment to an institution on Pflieger's advice. The trial court characterized Williams' move as one which "g[a]ve her pause." Although the breach was partially healed, their relationship

never rose to its previous level. In regard to Boughton, Williams' belief that Boughton was improperly obtaining money from her is supported by testimony showing that in the course of their relationship, Williams loaned Boughton over $70,000, which he never repaid. In the trial court's characterization, Jack had a "record as a failed businessman," and "always had his hand out."

Although some of Williams' specific beliefs about Pflieger and Boughton may have been erroneous (or as the trial court suggested, "unfair,") evidence supports the court's conclusion that Williams' testamentary alterations were not based on insane delusions. *Cf.* ***Evans*** at 275, 265 N.W.2d at 535 (credible evidence showing a testator had grounds for "feelings" of estrangement towards the objectors is relevant to a determination of whether testator's erroneous beliefs regarding objectors, in and of themselves materially affected the dispositions provided in the will).

On the positive side, Williams' love of art and her religion are undisputed. Experiences in her later life led her to an increasing desire to do charitable works. For example, she endowed a Catholic chapel in an institution where she lived, and she wished to honor the memory of a religiously active friend stricken with a fatal illness. Witnesses to the 1992 and 1993 instruments testified to Williams' desire to donate to the benefit of art-oriented and religious causes, as well as her belief that her ten percent bequests to Boughton and Pflieger demonstrated her care for them.

As with the first prong of the ***Evans*** test, Boughton and Pflieger cannot meet the second prong of the test either. They cannot show that "but for" her insane delusions, Williams would never have changed her will. ***Evans***, at 274, 265 N.W.2d at 535.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.